

County of Santa Clara

Probation Department

Adult Division
2600 North First Street
San Jose, California 95134
(408) 435-2100

Adult Division-South County
12427 Monterey Road
San Martin, California 95046
(408) 686-3630

Adult Division-North County
270 Grant Avenue
Palo Alto, California 94306
(650) 324-6500



John Cavalli
Chief Probation Officer

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Gary Sanchez, Deputy Chief Probation Officer

Implementation of the Substance Abuse and Crime Prevention Act

The stated purpose and intent of the Substance Abuse and Crime Prevention Act is to divert from incarceration into community based treatment programs, non-violent defendants, probationers and parolees with simple drug possession and drug use offenses; to halt the wasteful expenditure of funds on incarceration of non-violent offenders; to enhance public safety by reducing drug related crime; save incarceration space for violent offenders; and improve public health. These objectives are consistent with the mission of the Santa Clara County Probation Department, to protect the community and prevent recidivism, and one of our subset of goals, to develop and implement prevention and intervention programs in partnership with the community and criminal justice agencies to help reduce crime.

Our initial review of the impact of Proposition 36 (SACPA) determined that 2,800 of our 9,600 actively supervised clients were on probation for one or more cases involving qualifying non-violent drug offenses and eligible for Prop 36 treatment. Among this population were individuals who were concurrently on probation for non-qualifying crimes, including domestic violence, other victim-related offenses, property and theft related law violations. The frequency of client contact and level of supervision in our department is initially determined by an assessment of client risk and needs (the Wisconsin Model of case classification). The fact that these clients were on active supervision caseloads is symbolic of the need for monitoring they required, by the risk they posed to the community and/or their life management difficulties, including their need to overcome a substance abuse disorder.

Given the numbers of defendants who were to become eligible for Proposition 36 treatment, particularly the under the influence misdemeanor, we were concerned about the high numbers of new clients who would be placed on probation and the impact this influx of new cases would have on our ability to sustain close monitoring of our more high risk clients. These were issues, from our perspective, which needed to be addressed as our county established the SACPA Steering Committee, which consisted of representatives from the Board of Supervisors, county executive, Court, various justice agencies, law enforcement, the county's treatment community, county corrections, parole and community based organizations.

Santa Clara County has a history of successful collaborations among its justice, treatment and executive leadership members. Our early entry into the federal Drug Court model of innovative approaches to drug dependant offenders provided the framework of our approach to Proposition 36. Our Drug Court has, since its inception, focused upon the treatment and recovery of seriously drug and alcohol dependent defendants, convicted of a wide range of non-violent offenses and criminal histories. Aside from the anticipated volume of new Proposition 36 clients and the required resources, we were well prepared to transition into this new venture as the infrastructure was in place and the goals consistent with this Act had long been established in our community.

Policy and procedural implications for our department included the identification of the clients who were on probation for qualifying non-violent drug offenses, how to transition them into Proposition 36 treatment if they violated probation, and how to respond to the many eligible clients who were in our inactive, banked, caseload. For the new Proposition 36 grants of probation, we needed to identify alternatives to the traditional violation of probation proceeding, provide focused staff training on the Act, and establish protocols between the Probation Department, Court, District Attorney, Public Defender and the Department of Alcohol and Drug Services (DADS). The primary focus of these procedures was to ensure that the supervision and monitoring of the SACPA participant was consistent with the Court's expectations and that collaboration among the parties was directed toward identifying services and enhancing support to the client who was making a sincere effort toward recovery.

Allocation of Resources

The Steering Committee included in its recommended distribution of SACPA funds, the development of the Probation Department's Recovery Services Unit, consisting of a supervisor, nine deputy probation officers, two community workers and two support staff. Five of these officers are dedicated to the assessment of the Proposition 36 eligible defendant to determine the appropriate level of probation supervision and the gathering of criminal justice information, which we share with the DADS treatment assessor. In addition to criminal justice history, we review previous probation files on the client, contact current probation or parole officers and conduct an interview of the client. Information is shared with the treatment assessor to ensure a proper understanding of the individual's substance abuse history, prior or current known treatment efforts, and any other issues which may effect the treatment effort. Four probation officers assigned to the Recovery Services Unit each supervise a cap of 100 Prop 36 clients and work in tandem with the DADS' assessment and client management and support staff.

The probation assessment includes an evaluation of the individual's level of risk to the community so that a supervision plan may be developed. A report is prepared for the court which identifies the level of supervision the defendant will receive and the frequency of routine and randomly scheduled contact between the officer and the client. The probation and treatment assessments are joined into a single report to the Court for the sentencing hearing, at which the Court will determine the level of supervision, conditions of probation and treatment. Four levels of probation supervision are available to the court: Drug Treatment Court (probation officer ratio of 60 clients to each officer), Recovery Services Unit (100 clients per officer), General Supervision (150 clients per officer) and Banked (administrative monitoring only).

While officer to client ratios differ at each level, the probation department applies the Drug Court model of supervision to each individual, which includes drug testing and the sharing of the results with the court and treatment provider (via DADS), progress reports to the Court at scheduled review hearings, frequent reassessments of progress and appropriateness of treatment regimen and support of the individual's treatment effort. Positive test results do not result in Violation of Probation action and are often accepted as an anticipated relapse in the recovery effort. The level of supervision and the type of treatment may be adjusted by the Court as the client shows signs of not progressing in recovery.

Initial Experiences

Among the unanticipated challenges of our early experiences were the frequency by which the eligible client was in custody at the time of the assessment referral, and later, the level of addiction and criminal history presented by the population of clients convicted of misdemeanor, under-the-influence, charges. The Recovery Services Unit was initially constructed to assign four officers to assessment and five to supervision, however, early on we recognized the need to reverse that ratio. In-custody clients (approximately 45% of total referrals) present such problems as the need to expedite the Court hearing, locate and visit the client in a large and busy custodial setting, and gathering for the Court information as to the status of other cases which were often pending or any other impediments to the client's release. Despite every effort by the Pre-Trial Release Program,

District Attorney and Defense Attorney, many Proposition 36 eligible individuals are in custody at the time of their sentencing hearing.

We anticipated that a significant portion of the Proposition 36 population, as high as 40%, would be referred to our banked, non-reporting status, caseload due to the number of misdemeanants who were likely to be granted probation. It was rare that this type of offender received formal probation in the past, however, we anticipated that our resources would be impacted somewhat by this offender group. We have since learned that many fewer individuals qualify for non-reporting status (22%), and that the misdemeanor population requires virtually the same level of supervision and monitoring as the felony population. The misdemeanor offenders tend to have extensive abuse histories, have a variety of prior offenses, past probation experiences and concurrent cases pending adjudication.

The Court, adhering to the Drug Court model, has stressed the value of drug testing, both to monitor the individual's progress in treatment and to serve as an incentive to refrain from abuse. Drug Court and Recovery Services Unit staff conduct weekly testing, both scheduled and random. General supervision and banked clients are tested thrice monthly, one test per month is random. The Court and DADS staff are informed of positive results. Of the 3,900 drug tests administered to Proposition 36 clients during the third quarter of this fiscal year, 11% have tested positive. This is significantly less than all other non-Proposition 36 clients in general supervision who may or may not be engaged in treatment and are not being tested with the same regularity. During this same period, there were 452 episodes where the Proposition 36 client failed to report for their test. It has been our experience, however, that those clients being monitored more closely by probation, being tested more frequently and reporting to Court for regular progress reviews are more successful in their treatment regimen than those receiving fewer probation services.

The Probation Department's Recovery Services Unit is co-located with Department of Alcohol and Drug Services assessment and referral practitioners, an ancillary services director and contracted case managers in a leased facility directly across the street from the Court facility which houses five Proposition 36 functioning Courts. This promotes consistent client centered communication, a sharing of client concerns and prompt client access to a variety of services. The number of clients who fail to report for their initial assessment or fail to report after their grant of probation has declined measurably since our move to this building. Bimonthly meetings with the Drug Court Judge are conducted on site and fosters successful exchanges and responsiveness to each department's concerns.

Issues of Concern

A significant number of Proposition 36 eligible defendants require residential treatment and there is an insufficient number of contracted beds in the community to accommodate this demand. It is particularly difficult for a client with a serious addiction disorder to maintain sobriety awaiting placement in the proper program as personal incentives and motivation may be compromised while they await placement. This places additional burdens on the probation officer, to properly monitor and support the client during his or her most difficult period of adjustment.

Many of these individuals suffer from dual mental health and abuse disorders as self medication by illicit drugs is a frequent form of escape and coping. Within the past year, the Probation

Department established two small caseloads, outside of SACPA resources, titled Dual Diagnosis, to provide support and encouragement and to help the client maintain a link to community resources. An increasing number of Proposition 36 eligible clients are being referred to our Dual Diagnosis caseloads, and we are encountering increasing difficulty locating and accessing the sparse resources which may exist in the community. Mental Health disorders, of varying degree of severity, are a common affliction among our Proposition 36 clientele and their access to treatment and medication are often compromised by barriers not necessarily of their making.

There is concern that as more probation resources are dedicated to the “non-violent” drug offender, our ability to supervise and monitor our more high risk clients may be jeopardized. Due to the constraints in terminating or revoking probation for the non-compliant, uncommitted client, staff time is often diverted to the recalcitrant client from those who are dedicated to achieving sobriety. While we will not compromise our commitment to public safety, every effort will be made to maintain a balance of probation resources devoted to those clients who require close monitoring in order to protect the community and those individuals whose risk to reoffend may be minimized by proper intervention and support of their substance abuse recovery, as prescribed by SACPA.

Staff Comments

Deputy Probation Officer, Ha-Than Ho (AMT, Banked Caseload)

“Successful contact with probation is about 75%, 9% of the clients are in custody due to bench warrants after the grant of probation, and 15% of the clients are in Violation of Probation status for failure to report, no current address, but the majority are due to new drug charges....Biggest challenge is to maintain contact.”

Supervising Probation Officer, Barbara Maypark (General Supervision)

“The Prop 36 cases are supervised much the same way as other cases with noted distinctions. With the added monies made available (SATTA), urine testing is increased and performed by auxiliary personnel, increased resources are available for treatment and additional services are provided involving help with basic necessities....Reward results from observing clients turning their lives around and challenges remain with the highly manipulative or difficult client.”

Deputy Probation Officer, Dustin Eng (Recovery Service Unit, Assessment)

“The juxtaposition of the courthouse and the Proposition 36 Assessment Center allows defendants to report for an assessment immediately after court. Despite the high volume of cases and numerous ‘short turn around’ cases, the assessment officers have struggled to maintain equilibrium. The team of assessment officers has been successful in assessing defendants and preparing reports in time for the court, however, procedural changes can be made to increase efficiency.”

Deputy Probation Officer, Nydia Smith (Recovery Services Unit, Supervision)

“As a supervision PO, there are many challenges faced when supervising P36 defendants. For the majority of our defendants, substance abuse has been a way of life for 10 years or more. While some are genuinely tired of using and want help, others wanted to get out of jail and opted for

P36 in order to be released from jail....Most have no gainful employment and/or lack the necessary skills to secure a job with decent wages, have no positive support or health care. A lot of clients suffer from mental illness, some have been diagnosed but many have not and are not receiving the necessary and appropriate services, including but not limited to medications....It is imperative to maintain contact with the clients in order to ascertain their compliance, lend encouragement and to foster a sense of immediate accountability....For those who want to discontinue using, participation in P36 is an invaluable opportunity and tool.... Hearing the client say 'thank you for staying on top of me and not letting me get away with anything' is a reward in itself. "

Supervising Probation Officer, Lynne Emery (Drug Treatment Court)

"It is rewarding for DTC staff to see the treatment concept (originally established by the Drug Treatment Court model) extended to, and more fully accepted by both the community and the criminal justice system, we are no longer isolated in promoting and utilizing treatment as a legitimate alternative to incarcerating drug addicts. Proposition 36 has also engendered resources and services not previously available to recovering addicts, and this aspect is also gratifying."

Supervising Probation Officer, Laura Wegl (Dual Diagnosis)

"The Probation department has shown consistently that intensive supervision with dual diagnosed clients leads to a high rate of success, less jail, less EPS involvement and lower recidivism rates. Our clients use drugs in many cases to self medicate and counter-balance the effects of their mental illness. With a team effort including probation, the courts, mental health and DADS, we are seeing stability, balance, self confidence, education about their mental illness, independence and maturity from our clients. This team involvement creates a safer community and enhances the client's sense of competence and productivity."